

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: ZIMMER NEXGEN KNEE)
IMPLANT PRODUCTS LIABILITY)
LITIGATION)
This Document Relates to All Cases)
)
)

MDL No. 2272
Master Docket Case No. 11 C 05468
Judge Rebecca R. Pallmeyer

ORDER

Motion for summary judgment [2106] is granted. Summary judgment is granted in 137 cases listed in this order.

STATEMENT

Defendant Zimmer, Inc. has filed an omnibus motion (hereinafter "Zimmer Omnibus Motion") ([2106] in Master Docket, Case No. 11 C 5468) for summary judgment in more than 100 cases in this MDL proceeding. This order applies to 137 of those cases. Summary judgment should be granted in each of these cases, Zimmer argues, because Plaintiffs failed to timely submit expert reports, as required by Case Management Order No. 9 (hereinafter "CMO-9") ([1651] in Master Docket, Case No. 11 C 5468). At the time the court entered CMO-9, the admissible expert testimony Plaintiffs had offered in the MDL suggested that the allegedly defective design of Zimmer's NexGen Flex knee implants caused injury only for those patients who attained knee flexion, post-implant, equal to or greater than 120 degrees ("high flexion"). Thus, to ensure that MDL Plaintiffs had an adequate evidentiary basis for their claims, CMO-9 required Plaintiffs to submit medical documentation that they had attained high flexion after implantation. Cases in which Plaintiffs failed to timely submit such documentation would not be eligible for selection as a bellwether case in the MDL. (CMO-9 ¶ 5.) CMO-9 recognized, however, that some Plaintiffs who did not have medical documentation of high flexion may nevertheless maintain that the design of Zimmer's knee implant caused their injury. (*Id.* ¶ 6.)

The order labeled those cases "Track Two" cases. (*Id.*) Because an expert opinion had not yet been offered to support a causation theory that did not involve attainment of high flexion, the order required Plaintiffs pursuing an alternative theory of causation to submit a Rule 26(a)(2) expert report in support of that theory by a specified deadline. (*Id.* ¶ 7.)

In its omnibus motion, Zimmer has produced evidence that Plaintiffs in the 137 cases at issue in this order have failed to submit expert reports in accordance with CMO-9. (Zimmer Omnibus Motion at 3, ¶ 7.) In addition, Zimmer has cited legal authority demonstrating that expert testimony is required under state law to sustain the claims in each of Plaintiffs' cases. (See Ex. A to Zimmer Omnibus Motion [2106-1].) In these 137 cases, Plaintiffs have not responded to Zimmer's motion. Because Plaintiffs have failed to address the legal arguments and factual assertions in Zimmer's motion and because that motion and its supporting materials establish that Zimmer is entitled to summary judgment, the court grants Zimmer's motion for summary judgment ([2106] in Master Docket, Case No. 11 C 5468) in the cases listed below.

See FED. R. CIV. P. 56(e)(3).

Adams, Jeff	13 C 5058	Crawford, Naomi	12 C 7891
Allen, Lucie	13 C 3660	Cripps, Dale G.	12 C 8141
Andrus, Charlotte	15 C 3215	Didonato, Peter	13 C 6805
Ashton, Janell C.	13 C 8204	Diliberti, Diane	13 C 3143
Barger, David	12 C 2845	Doonan, Thomas	12 C 4982
Barnes, Sherry	12 C 990	Ellison, Marie	12 C 5797
Barry, Denis	14 C 2377	Faith, Gary	13 C 4400
Barthel, Paul	12 C 3880	Fenn, Yvonne	12 C 10279
Bell, Alice	14 C 2968	Flores, Jr., John	12 C 8143
Blume, Barbara	12 C 4724	Fomby, Vanessa	13 C 1797
Brooks, Brenda	14 C 486	Forde, Lawrence	12 C 2382
Brown, Jeffory	12 C 8134	Foster, Rosalind	15 C 1519
Bruno, Oscar	12 C 1002	Geslao, Lois	13 C 3663
Buck, Gwen	13 C 5063	Gibbs, Anthony	14 C 6703
Calloway, Ezra Sr.	13 C 9088	Gnann, Sally	13 C 6954
Cameron, Terrance R.	12 C 3968	Gonzales, Bonnie	13 C 5059
Camhi, Murray	14 C 2972	Greene, Gale	12 C 5412
Carr, Robert	11 C 974	Gruntorad, Adrian	12 C 4488
Carrea, Donna	13 C 6388	Hagans, William	13 C 1663
Coleman, Pauline L.	15 C 814	Harris, Gregory	14 C 8095
Colson, Miller	13 C 956	Harris, Samuel	12 C 5790
Consalvo, Donna	12 C 9005	Hennen, Jeffrey	12 C 8370
Copeland, Bertha	14 C 2769	Hester, Robert J. Sr.	14 C 4767

Hichborn, Danielle	12 C 4742	Mutter, Sharon	12 C 5202
Higdon, Elizabeth	14 C 1507	Myrick, Rhonda	15 C 5024
Hill, Patricia	12 C 8111	Nard, Deborah	13 C 3033
Hill, Shirley	13 C 5447	Neiss, Sandra	14 C 6233
Hines, Paul L.	14 C 1067	Oliver, Roger	13 C 203
Hix, Lonnie	13 C 2556	Owen, John Allen	13 C 1799
Holmes, Jimmie	14 C 435	Palazzolo, Theresa	12 C 2840
Horr, Nancy J.	13 C 3235	Parker, Richard	11 C 8672
Hughes, Leola Sharpy	12 C 10301	Perez, Anna L.	14 C 1196
Hunsinger, Monica	13 C 3010	Platt, Patricia	14 C 8073
Hurst, Nancy	14 C 5980	Robinson, Emily	14 C 428
Jefferson, Raymond	12 C 5174	Rodrigues, Eugene	12 C 4744
Johnson, Brian Keith	11 C 8816	Roe, Vicki	15 C 2103
Johnson, Jacqueline	14 C 5013	Rosario Colon, Cesar	12 C 4754
Johnson, Viney	15 C 8011	Santos, Antonio F.	14 C 8082
Joyner-Clark, Sharon	13 C 524	Scavazzo, Vincent	12 C 4929
Kallsen, Nancy	12 C 10283	Shumate, Pamela	15 C 3209
Kauz, Lois	13 C 3309	Seibert, William	12 C 2213
Kennedy, Edward	12 C 3021	Senz, Norma	13 C 8119
Kiser, Ben Edward	12 C 2141	Shaw, Nelda	13 C 3621
Knox, Mary	13 C 8112	Siambanes, Dorothy	12 C 1809
Learn, Maxine	13 C 5960	Smith, Juliana	13 C 5262
Lewallen, Daniel	12 C 6166	Smith, Larry O.	13 C 8205
Littrell, Sally	12 C 9927	Sprinkles, Frances	14 C 8104
Lomanto, Mary Jane	13 C 7382	Stevenson, Kimberly	12 C 3328
Lopez, Myrta	11 C 5750	Stokes, Cynthia	12 C 4481
Madera-Rivera, Nilsa	12 C 9011	Stringer, Kathleen	13 C 6804
Mahon, Ronald	12 C 2139	Suggs, Leslie	13 C 7383
Marks, Helen L.	12 C 788	Tedrahn, Linda	12 C 4758
Martin, Ephsanna	13 C 5194	Thomas, Victor	13 C 8202
McClanahan, Paula	11 C 6424	Thorpe, George	12 C 5411
McCray, Geraldine	12 C 9378	Torres-Baez, Wilfredo	14 C 480
McCourt, Arnold	12 C 4727	Tretina, Dorothy	14 C 9554
McKenney, Elouise	11 C 5720	Turpin, Marcia	14 C 497
McKinney, Eddie L.	12 C 6502	Ventura, Loretta	14 C 3236
McVea, Barbara	12 C 9014	Walker-Connell, Brenda	14 C 5978
Mead, James W.	14 C 1313	Wells, Audrey Lee	14 C 432
Mercurio, Joseph	13 C 7374	White, Shirley	12 C 7896
Miller, Cynthia	13 C 6133	Williams, Houston	12 C 9424
Miller, Harold	13 C 5060	Williams, Mary	11 C 5731
Millington, Renee	13 C 6521	Willis, Vergie	12 C 5405
Mitchell, Delores	12 C 4890	Wilson, Susan R.	13 C 525
Moore, Donna	13 C 3351	Yerkovich, Matt1hew	14 C 1077
Murphy, Marijo	13 C 4410		

ENTER:



Dated: March 3, 2017

REBECCA R. PALLMEYER
United States District Judge